IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.538 OF 2005

Vishwanath M.Yadav. ...Petitioner.

Vs.

The President/Secretary Yadav

Sangh & Ors. ...Respondents.

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Mr.Mihir Desai for the Petitioner.

Mr.C.G.Gaavnekar with Mr.Sunil Singh for Respondent No.

Mr.A.G.Kothari for Respondent No.2.

Mr.P.M.Palshikar, AGP for Respondent Nos.3 and 4.

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CORAM : DR.D.Y.CHANDRACHUD, J.

March 23, 2005.

P.C. :

1. The Petitioner was appointed as a Headmaster of the Secondary School conducted by the First Respondent on 13th June 1983. The Petitioner was

placed under suspension on 28th March 1992 and his services came to be terminated on 30th April 1992. The Petitioner challenged his termination before the School Tribunal. The Second Respondent was appointed as Headmaster on 13th June 1993 by the management. The school is stated to have received aid from the Government on and after June 1995. Before the School Tribunal, an affidavit was filed on behalf of the management of the School on 12th October 2001 to the effect that the order of termination was withdrawn. On 17th July 2003, the School Tribunal disposed of the appeal filed by the Petitioner as being infructuous since the order of termination was withdrawn. The Second Respondent instituted a suit in the City Civil Court in which an order of status quo was passed on 14th August 2003. The suit was disposed of on 13th October 2003 with the direction that the management could take action in accordance with law but that its order shall not be acted upon for a period of four weeks. On 23rd October 2003, the management issued a letter of reversion to the Second Respondent. The Second Respondent thereupon filed an appeal before the School Tribunal which was dismissed by an order dated 13th April 2004. The Second

Respondent then filed a petition before this Court under Article 226 (Writ Petition No.1183 of 2004) which came to be admitted and an interim direction was issued by this Court on 23rd June 2004 by which the Petitioner who was due to retire on 31st January 2005 was permitted to continue as Headmaster of the School. However, it was clarified that after the retirement of the Petitioner, the management would also consider the claim of the Second Respondent for appointment to the post of Headmaster. The Petitioner accordingly functioned as Headmaster until 31st January 2005 on which date he attained the age of superannuation.

2. The claim of the Petitioner in these proceedings is in regard to the wages which are due and payable to him for the period after 1st May 1992, consequent to the withdrawal of the order of termination. According to the Petitioner, between the period 24th June 2004 and 31st January 2005, he has worked as Headmaster and has been paid his salary.

3. The facts which have been narrated hereinabove, would show that the order of termination that was

passed against the Petitioner on 30th April 1992 was withdrawn by the management on 12th October 2001. Consequent upon the interim order of this Court dated 23rd June 2004 by which the Court declined to stay the order of reversion that was passed against the Second Respondent, the Petitioner took over as Headmaster upon the withdrawal of his termination. The Petitioner continued to work as Headmaster until 31st January 2005 when he attained the age of superannuation. The Respondent-management has agreed through its Counsel before the Court to pay to the Petitioner his salary in accordance with applicable Government scale as a full time Assistant Teacher from the date of the order of termination (1st May 1992) till recruitment (23rd June 2004). The management has agreed through Counsel to make this payment on or before 31st December 2005. The statement is accepted. The Petitioner on his part has given up the claim for the difference of wages between the post of Assistant Teacher and of Headmaster for the aforesaid period. A statement to that effect is made by Counsel appearing on behalf of the Petitioner. However, the Petitioner and the management have agreed that the Petitioner shall be

treated as a Headmaster with continuity of service from 23rd June 2004 till 31st January 2005 for the purposes of determining his pay and retirement dues including Pension and gratuity. It is, however, agreed that the Petitioner shall not be entitled to any arrears on account of salary payable as a Headmaster till 23rd June 2004.

4. The Respondent-management will be at liberty to move the State Government for release of the grant in respect of the amount that has been agreed to be paid to the petitioner for his salary as an Assistant Teacher between 1st May 1992 till 23rd June 2004. This Court does not express any opinion upon the entitlement of the management to receive a reimbursement from the State Government. Any application made shall be considered by the State Government in accordance with law. The Petitioner would be at liberty to move the State Government for the difference in the wages payable to him in accordance with his pay fixation for the period 24th June 2004 and 31st January 2005 and in the event of such an application being made, it shall be considered in accordance with law by the State Government.

5. The management shall submit to the State Government the pension papers of the Petitioner within a period of four weeks from today. The Pension papers shall be duly processed and the payment which is found to be due and payable in accordance with law to the Petitioner on account of his pension and other retiral dues shall be released expeditiously and in any event within a period of three months thereafter.

6. The Petition is accordingly disposed of in the aforesaid terms. No order as to costs.

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